

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MERCER ISLAND SCHOOL DISTRICT,

Plaintiff,

v.

D.M. and M.M., parents of L.M., a minor,

Defendants.

CASE NO. C03-3952JLR

ORDER

**I. INTRODUCTION**

This matter comes before the court on Defendants' motion for attorneys' fees (Dkt. # 32) and Plaintiff's motion to dismiss Defendants' attorneys' fees claims (Dkt. # 31). For the reasons stated below, the court RENOTES the Defendants' motion to provide for supplemental declarations from the parties, and DENIES Plaintiff's motion.

**II. BACKGROUND**

Plaintiff Mercer Island School District ("District") brought this action for judicial review of portions of a ruling from an Administrative Law Judge ("ALJ") at the Washington Office of the Superintendent of Public Instruction. The ALJ ruled that L.M. (the "Student"), the daughter of Defendants D.M. and M.M. (the "Parents"), had a disability within the meaning of the Individuals with Disabilities Education Act

1 (“IDEA”), and granted relief that included special education accommodations and  
2 reimbursement for some of the expenses the Parents incurred in providing tutors for the  
3 Student.

4 In December 2004, this court determined that the evidence did not show that the  
5 Student had an IDEA-qualifying disability. The court also determined that the District  
6 had not met its obligations under the IDEA to timely and appropriately evaluate the  
7 Student to determine if she had a disability, and thus the Parents were entitled to  
8 reimbursement of some expenses. The Parents, focusing on the latter determination, seek  
9 attorneys’ fees as the prevailing party in this action.

### 11 **III. ANALYSIS**

12 The Parents seek attorneys’ fees not only under the IDEA, but also under Section  
13 504 of the Rehabilitation Act (29 U.S.C. § 794) and 42 U.S.C. § 1988 (“§ 1988”). As the  
14 court awarded relief solely under the IDEA, it turns first to the IDEA’s attorneys’ fees  
15 provision.

16 The IDEA permits the court to exercise discretion to award “reasonable attorneys’  
17 fees” to “a prevailing party who is the parent of a child with a disability.” 20 U.S.C.  
18 § 1415(i)(3)(B)(i)(I). The District contends that because the court held that the Student  
19 had no disability, the plain language of the statute dictates that the Parents cannot recover  
20 attorneys’ fees. The statute defines “child with a disability” as a child who needs special  
21 education as a result of one or more defined learning disabilities. 20 U.S.C.  
22 § 1401(3)(A)(i)-(ii). The statute also notes, however, that its definitions hold “[e]xcept as  
23 otherwise provided” in other portions of the IDEA. 20 U.S.C. § 1401.

24 Other portions of the IDEA implicitly assign a different meaning to “child with a  
25 disability.” The IDEA attempts to ensure that schools locate, identify, and evaluate  
26 students who might have a learning disability. In building the statutory framework for  
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1 this process, the IDEA describes these *potentially* disabled students in need of evaluation  
2 as “children with disabilities.” For example, although a child’s status as “child with a  
3 disability” is uncertain until evaluation procedures are complete, the IDEA guarantees  
4 “parents of a child with a disability” the right to “participate in meetings with respect to  
5 the identification, evaluation, and educational placement of the child . . . .” 20 U.S.C.  
6 § 1415(b)(1). When a school decides to evaluate a student for a potential disability, the  
7 IDEA requires it to notify “the parents of a child with a disability” of procedural  
8 safeguards. 20 U.S.C. § 1415(c)(6). The term “child with a disability” appears to  
9 encompass, at least in IDEA provisions relating to the evaluation process, children who  
10 are merely suspected of having a disability.  
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12 The court presumes that identical terms used in different parts of the same statute  
13 have the same meaning. Sorenson v. Sec’y of Treasury, 475 U.S. 851, 860 (1986). That  
14 presumption must give way, however, where it would lead to results inconsistent with the  
15 intent and purpose of the law. Sokha Sun v. Ashcroft, 370 F.3d 932, 939-940 (9th Cir.  
16 2004). Applying the statutory definition of “child with a disability” in IDEA provisions  
17 describing the pre-evaluation and evaluation rights of potentially disabled students is  
18 inconsistent with the purpose of the IDEA, as it would render those provisions a nullity.  
19 Given the IDEA’s use of “child with a disability” in defining procedural responsibilities  
20 leading up to the initial determination of a child’s disability status, the court concludes  
21 that a child suspected of having a disability is a “child with a disability” under the IDEA  
22 until the child’s evaluation is complete, at which time the child is a “child with a  
23 disability” only if diagnosed with an IDEA-qualifying disability.  
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25 The court must next decide what the term “child with a disability” means as used  
26 in the IDEA attorneys’ fees provision. Given its dual meaning in the remainder of the  
27 IDEA, the court holds that the term can mean either a child with an IDEA-qualifying  
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1 disability, or a child suspected of having an IDEA-qualifying disability, depending on the  
2 context of the dispute at issue. To illustrate, consider two hypothetical sets of parents.  
3 The first, frustrated with a school's slow and ineffective evaluation process, can take  
4 advantage of their right to challenge school procedures for identifying and evaluating  
5 their child under 20 U.S.C. § 1415(b)(6). They can pursue their challenge through a due  
6 process hearing under 20 U.S.C. § 1415(f)(1) and ultimately to a district court under 20  
7 U.S.C. § 1415(i)(2)(A). If they were to prevail in their challenge, the parents would be  
8 parents of a "child with a disability" because they would have vindicated the child's  
9 rights under portions of the IDEA that equate a potentially disabled child with a "child  
10 with a disability." A second set of parents, who have no quarrel with school  
11 identification and evaluation procedures, can challenge the substantive conclusion that  
12 their child is not disabled. If the second set of parents fails to demonstrate in the district  
13 court that their child has an IDEA-qualifying disability, they would be neither prevailing  
14 parties nor the parents of a "child with a disability," because the portions of the IDEA  
15 under which they sought relief require that the child have a disability.  
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18 The Parents in this action are an amalgam of these two hypothetical sets of parents.  
19 They were successful in challenging the District's procedures for evaluating the Student,  
20 but unsuccessful in challenging the District's determination that the Student did not have  
21 an IDEA-qualifying disability. Thus, for purposes of determining attorneys' fees, they  
22 are "parents of a child with a disability" as to their procedural claims, but not with respect  
23 to their substantive claims.  
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25 The court will award the Parents their reasonable attorneys' fees expended in  
26 successfully challenging the District's failure to timely evaluate the Student, but not fees  
27 expended in challenging the District's assessment that the Student was not disabled.  
28 From the record before it, which does not differentiate between attorneys' fees incurred in

1 these tasks, the court cannot determine a fee award consistent with this standard. The  
2 court directs the Parents to prepare a supplemental declaration setting forth their claimed  
3 attorneys' fees in a manner consistent with this order.

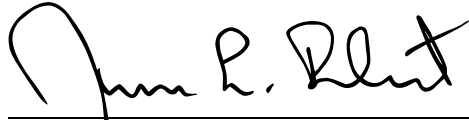
4 Before concluding, the court must address the Parents' claims for attorneys' fees  
5 under the Rehabilitation Act and 42 U.S.C. § 1988. Both statutes permit the court to  
6 award attorneys' fees to a "prevailing party." 29 U.S.C. § 794a(b); 42 U.S.C. § 1988(b).  
7 Whether the Parents could recover under either statute is an open question, but the court  
8 need not answer it. The Parents are prevailing parties only with respect to their  
9 challenges to the District's improper evaluation of the Student. If the court were to award  
10 attorneys' fees under either statute, it would award fees accordingly. See Schwarz v.  
11 Sec'y of Health & Human Servs., 73 F.3d 895, 901-02 (9th Cir. 1995) (discussing  
12 discretion to reduce fees where party was only partially successful); see also Gracie v.  
13 Gracie, 217 F.3d 1060, 1070 (9th Cir. 2000) (remanding with instructions to award fees  
14 only on successful claims). Therefore, because the Parents' fee claims under the  
15 Rehabilitation Act and 42 U.S.C. § 1988 would fare no differently than their claims under  
16 the IDEA, the court declines to decide whether attorneys' fees are available to the Parents  
17 under either statute.

#### 20 IV. CONCLUSION

21 For the reasons stated above, the court DENIES the District's motion to dismiss  
22 (Dkt. # 31) and directs the Parents to submit a supplemental declaration from their  
23 counsel regarding their motion for attorneys' fees (Dkt. # 32). The supplemental  
24 declaration shall set forth the portion of counsel's fees attributable to the Parents'  
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1 successful challenge to the District's evaluation procedures for the Student.<sup>1</sup> The Parents  
2 shall file the supplemental declaration by 4:00 p.m. on April 22, 2005. The District may  
3 file a supplemental declaration in response by 4:00 p.m. on April 29, 2005. The clerk  
4 shall redate the Parents' motion for attorneys' fees (Dkt. # 32) to April 29, 2005.

5 Dated this 13th day of April, 2005.

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9 JAMES L. ROBART

10 United States District Judge  
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<sup>1</sup>Parents' counsel identified 43.5 hours spent solely in pursuit of unsuccessful claims.  
25 The court finds it extraordinarily unlikely, given the focus of this litigation on whether the  
26 Student had a disability, that only 43.5 hours out of the more than 450 hours counsel devoted to  
27 this matter were spent on that issue. If counsel's supplemental declaration does not reflect  
28 strong evidentiary support for fees expended on his successful procedural claims as opposed to  
unsuccessful substantive claims, the court will exercise its discretion to estimate its own  
apportionment of attorneys' fees.